

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Moose Moss Press, LLC

- Plaintiff -

Civil Action No. **2:17 cv-00123**
(action under 28 U.S.C. § 1332
Diversity Jurisdiction)

Envision Pharmaceutical Services, LLC
d/b/a Envision RX,

-Defendants -

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND REQUEST FOR INJUNCTION**

JURISDICTION AND VENUE

A. Jurisdiction of this Court arises under 28 U.S.C. § 1332. The Amount in controversy between the parties is at or above \$122,000.00 and therefore above the \$75,000.00 minimum amount in controversy.

B. The Plaintiff Moose Moss Press LLC has established its citizenship on 01/06/2012 in the State of Wisconsin (within the Federal Eastern District), has been incorporated properly within the State of Wisconsin and Wisconsin Department of Financial Institutions ("WDFI") states that Moose Moss Press LLC has a Principal Office located at 2785 North Carlton PL Milwaukee WI 53210-2151 and is a domestic Wisconsin Limited Liability Company. Attached hereto as Exhibit 1 is a true and accurate copy of the WDFI record.

C. The Plaintiff Moose Moss Press LLC has established its corporate citizenship on 01/06/2012 in the State of Wisconsin (within the Federal Eastern District), has been incorporated properly within the State of Wisconsin and

D. Wisconsin Department of Financial Institutions ("WDFI") which lists Moose Moss Press LLC and has a Principal Office located at 2785 North Carlton PL Milwaukee WI 53210-2151 and is a domestic Wisconsin Limited Liability Company. Attached hereto and incorporated by reference as Exhibit 1 is a true and accurate copy of the WDFI record.

E. The Defendant, Envision Pharmaceutical Services, LLC d/b/a Envision RX, has established its corporate citizenship on 04/15/2003 in the State of Ohio and has been incorporated properly within the State of Ohio and the Ohio Secretary of State lists which lists Envision Pharmaceutical Services, LLC and has a Principal Office located at 2181 E. Aurora Rd. Twinsburg, OH 44087 and is a domestic Ohio Limited Liability Company. Attached hereto and incorporated by reference as Exhibit 2 is a true and accurate copy of the Ohio Secretary of State Record.

F. Furthermore, supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. 1367. Plaintiff pleads for preliminary and permanent injunctive relief under F.R.C.P 65 (a)(1). Venue in this District is proper in that the conduct complained of occurred while Plaintiff was domiciled here.

THE PARTIES

1. The Plaintiff, Moose Moss Press LLC is a Wisconsin Business Entity, domiciled at 2785 N. Carlton Pl. Milwaukee WI 53210.
2. The Defendant, Envision RX is a foreign business entity domiciled and with a principle place of business at 2181 East Aurora Rd. #201 Twinsburg OH 44087.

FACTS

3. That Plaintiff readopts and re alleges Counts 1-2 as though fully set out herein:
4. That at all times material hereto the Plaintiff Moose Moss Press LLC is a small publishing company engaged in the publication of scholarly material and in no way associated with the Defendant.

5. That at all times material hereto Envision RX is an Ohio Business Entity, primarily in the business of health care, or health care related services.
6. That Envision RX routinely provides and receives the personal medical information of third parties.
7. That Envision RX customers routinely fax in the personal medical information of third parties.
8. That Envision RX customers routinely send the personal medical information of third parties.
9. That unfortunately, many of Envision RX customers send this personal medical information to the fax number of Moose Moss Press LLC.
10. That Plaintiff, Moose Moss LLC has made numerous attempts to stop the flow of Envision RX's customer personal health information, to no avail.
11. That Plaintiff, Moose Moss LLC entered into lengthy negotiations to sell Envision RX its fax number, but no final agreement was reached and Envision RX has opted out of any continued negotiations.
12. That with each new fax containing personal health information from an Envision RX customer, Moose Moss Press incurs substantial liability for the unauthorized disclosure of personal health information.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.

(a) A custodian of records incurs no liability under par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.

13. That attached hereto as Exhibit 1 is a true and accurate log of faxes received by Moose Moss Press LLC, from Envision RX customer (no personal medical information included).
14. That the personal medical information continues to be sent unabated to Plaintiff's Fax Number.
15. That each of these faxes constitutes a separate and distinct cause of action, for which Plaintiff faces imminent injury.
16. That the cost and/or potential cost to Plaintiff, as a result of actions or inactions by the Defendant harmed Plaintiff in the amount of \$122,000.00
17. That these actions by their very nature constitute more than financial harm.
18. That in the balance of hardships, making Envision RX responsible for their clients personal medical information, is not an overbearing remedy.
19. That forcing Envision RX to keep the flow of their customer's private health information would have absolutely no adverse effect on public

interest, moreover such a privacy requirement is part and parcel of standing Federal and Wisconsin law.

20. That Plaintiff is concurrently filing a nuisance claim, which Plaintiff has a substantial likelihood of winning.
21. That the failure of Envision Rx to contain its customer's private medical information constitutes a private nuisance, which interferes with Plaintiff's use/and or enjoyment of property.

Count 1

Preliminary and Permanent Injunctive Relief

22. That Plaintiff, adopts and realleges all counts 1-21 as though fully set out here in Count 1.
23. That the personal medical information continues to be sent unabated to Plaintiff's Fax Number.
24. That each of these faxes constitutes a separate and distinct cause of action, for which Plaintiff faces imminent injury.
25. That these actions by their very nature constitute more than financial harm.
26. That in the balance of hardships, making Envision RX responsible for their clients personal medical information, is not an overbearing remedy.
27. That forcing Envision RX to keep the flow of their customer's private health information would have absolutely no adverse effect on public interest, moreover such a privacy requirement is part and parcel of

standing Federal and Wisconsin law (See Wis. Stats. 146.84 and See Also 45 CFR 164.501, and as authorized under 45 CFR 164, subpart E.)

WHEREFORE, for the foregoing reasons, the Plaintiff hereby demands a preliminary and also a permanent injunction against the Defendant, for the reasons set out above in an amount to be determined by the trier of fact, pursuant to the laws of the United States of America and the State of Wisconsin, where applicable or allowable, pursuant to this pleading to include but not limited to actual damages and costs, disbursements, statutory attorney's fees,

Count 2

Private Nuisance

28. That Plaintiff, adopts and re alleges all counts 1-27 as though fully set out here in Count 2.

29. That the failure of Envision Rx to contain its customer's private medical information constitutes a private nuisance, which interferes with Plaintiff's use/and or enjoyment of property.

30. That as a result of Defendants actions or inactions, the Plaintiff was harmed

WHEREFORE, for the foregoing reasons, the Plaintiff hereby demands a judgment against the Defendant, for the reasons set out above in an amount to be determined by the trier of fact, pursuant to the laws of the United States of America and the State of Wisconsin, where applicable or allowable, pursuant to this pleading to include but not limited to an abatement of the private nuisance, actual damages and costs, disbursements, statutory attorney's fees.

Count 3
Negligence

31. That Plaintiff, adopts and re alleges all counts 1-30 as though fully set out here in Count 2.
32. That the Defendant owed the Plaintiff, it's own clients and the public a duty of care, primarily to facilitate the confidential transfer of Private Medical Information.
33. That Defendant breached and continues to breach its duty of care owed, by allowing the confidential personal medical information of its clients to be transferred unsecured to Plaintiff.
34. That as a result of Defendant's breach of care, the Defendant was harmed and that the cost and/or potential cost to Plaintiff, as a result of negligent actions or inactions by the Defendant harmed Plaintiff in the amount of \$122,000.00.

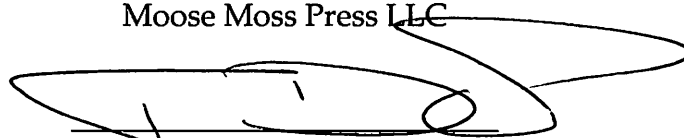
WHEREFORE, for the foregoing reasons, the Plaintiff hereby demands a judgment against the Defendant, for the reasons set out above in an amount to be determined by the trier of fact, pursuant to the laws of the United States of America and the State of Wisconsin, where applicable or allowable, for harm suffered as a result of the Defendants negligence.

Dated this 20th of February 2017

VAITYS LAW OFFICE

Attorneys for Plaintiff

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